

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARTEEZ DONOVAN LAIDLER,

Defendant-Appellant.

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FOR PUBLICATION

December 28, 2010

Nos. 294147; 295111

Wayne Circuit Court

LC No. 09-012575-FH

Advance Sheets Version

Before: O'CONNELL, P.J., and BANDSTRA and MURRAY, JJ.

O'CONNELL, P.J. (*concurring in part and dissenting in part*).

I concur with the majority's decision to affirm defendant's conviction. I respectfully dissent, however, from the majority's decision to vacate defendant's sentence. In my view, the trial court properly assessed points under offense variable 3, MCL 777.33.<sup>1</sup> I would affirm defendant's sentence.

As the majority explains, defendant and Dante Holmes were breaking into a home when Holmes was shot and killed. Defendant was convicted of first-degree home invasion, MCL 750.110a(2). At sentencing, the trial court assigned 100 points against defendant under OV 3, MCL 777.33(1)(a). Defendant now argues that the OV 3 score was erroneous.

As the majority recognizes, subsection (1)(a) of OV 3 requires trial courts to assess 100 points if "a victim was killed." MCL 777.33(1)(a). Subsection (2)(b) defines the parameters of the 100-point assessment: "[s]core 100 points if death results from the commission of a crime and homicide is not the sentencing offense." The majority bases its holding on the term "victim" in subsection (1)(a), and concludes that subsection (2)(b) merely identifies the offenses that are

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<sup>1</sup> The majority assumes that a co-perpetrator cannot be a crime victim under offense variable 3 (OV 3). I disagree. OV 3 plainly requires that perpetrators be accountable in sentencing when a death results from the commission of a crime. MCL 777.33(2)(b). If a perpetrator starts an action in motion and, as a result of the action, a co-perpetrator is killed, the co-perpetrator can be a "victim" within the meaning of OV 3.

subject to the 100-point assessment. This interpretation improperly curtails the terms of subsection (2)(b).

In *People v Albers*, 258 Mich App 578, 593; 672 NW2d 336 (2003), this Court held that for purposes of OV 3, the term “victim” means “any person harmed by the criminal actions of the charged party.” In the present case, defendant’s criminal action was a home invasion; the home invasion resulted in Holmes’s death. Because Holmes was harmed by defendant’s criminal action, Holmes was a “victim” within the meaning of OV 3. By parsing out responsibility for the home invasion and then parsing out responsibility for the resulting shooting, the majority identifies the homeowner as the sole “victim” of the home invasion and relegates Holmes to being the “victim” of the shooting. I disagree with this parsed logic. In my opinion, both the homeowner and Holmes are victims under OV 3.<sup>2</sup>

I would affirm both the conviction and the sentence of defendant.

/s/ Peter D. O’Connell

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<sup>2</sup> The majority asserts, “Holmes simply was not a ‘victim’ because he was not harmed by defendant’s criminal activity, or by the crime that was committed, jointly, by defendant and Holmes.” This statement would certainly be a revelation to Holmes’s survivors. Moreover, there are other offenses in which a perpetrator could be a victim, such as a bank robbery in which a defendant’s co-perpetrator was shot and killed, or an arson in which a defendant’s co-perpetrator “got caught up in the heat of the moment” and was burned.